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WASHINGTON STATE PATROL

General Administration Building, PO Box 42600 • Olympia, Washington 98504-2600 • (360) 753-6540

April 10, 1996

Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street NW Room 222  
Washington DC 20554

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

RE: Amendment of the Commission's Rules Regarding a Plan for Sharing the  
Costs of Microwave Relocation (WT Docket No. 95-157, RM 864<sup>3</sup>)

In accordance with Federal Communications Commission rules, enclosed are two  
copies of my letter to Mr. Reed E. Hundt to be filed with your office.

If you have any questions regarding this matter, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Annette M. Sandberg".

CHIEF ANNETTE M. SANDBERG

AMS:sjs  
Enclosures

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STATE OF WASHINGTON

WASHINGTON STATE PATROL

General Administration Building, PO Box 42600 • Olympia, Washington 98504-2600 • (360) 753-6540

April 10, 1996

The Honorable Reed E. Hundt, Chairman  
Federal Communications Commission  
1919 "M" St NW #814  
Washington DC 20554-0001

DOCKET FILE COPY ORIGINAL

Dear Chairman Hundt:

RE: Amendment of the Commission's Rules Regarding a Plan for Sharing the  
Costs of Microwave Relocation (WT Docket No. 95-157, RM 8642)

3

I have reviewed the letter of March 1, 1996, sent to you by Mr. Thomas E. Wheeler of Cellular Telecommunications Industry Association. I am deeply concerned with the tone of the letter which indicates the Washington State Patrol has not bargained in good faith regarding the microwave relocation our agency must undergo as a result of Federal Communications' action. The Washington State Patrol has negotiated in good faith and has negotiated in a manner to expedite the relocation to facilitate use by the private sector.

As a result of consultations with our state legislature, it is imperative we obtain full replacement cost for the public investment in our microwave infrastructure. Due to many factors, the cost may exceed what private vendors would pay for the State Patrol to relocate. In some cases, new towers and sites must be developed to accommodate the shorter path links required for higher frequencies.

As a public safety and law enforcement agency, our primary concern is to maintain emergency services for the citizens of the state of Washington. While we can understand Sprint Spectrum's need to obtain microwave links at the lowest cost possible, this cost cannot be at the expense of the Washington State taxpayers who have invested in our microwave infrastructure in the interest of public safety and emergency response. In addition, due to the fact that analog microwave equipment will soon become obsolete, we have included costs to upgrade to digital equipment as you indicated at the APCO meeting last August in Detroit, Michigan.

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Mr. Reed E. Hundt  
Page two  
April 10, 1996

As Chief of the Washington State Patrol, I urge you to fully investigate these allegations by the Cellular Telecommunications Industry Association before any rule changes are proposed and then allow additional public comment. Pursuant to the Federal Communications Commission rules, two copies of this letter have been filed with the Secretary.

Sincerely,

A handwritten signature in black ink, appearing to read "Annette M. Sandberg", written in a cursive style.

CHIEF ANNETTE M. SANDBERG

AMS:tlu

cc:

Commissioner Andrew Barrett

Commissioner Rachelle Chong

Commissioner Susan Ness

Commissioner James Quello

Mr. William F. Caton, Acting Secretary, Federal Communications Commission ✓

Ms. Michele Farquhar, Chief, Wireless Telecommunications Bureau

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March 1, 1996

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, NW  
Room 814  
Washington, DC 20554-0001

Re: **Amendment of the Commission's Rules Regarding a Plan  
for Sharing the Costs of Microwave Relocation**  
(WT Docket No. 95-157, RM 8642)

Dear Mr. Chairman:

We have written to you several times on the subject of microwave relocation and, in particular, the trend which continues to threaten the timely rollout of broadband PCS. As we have detailed in previous letters, certain incumbent microwave operators in the 2 gigahertz (GHz) band are using their status as FCC licensees to make unconscionable demands of the new PCS licensees as a pre-condition to the relocation of their facilities which must occur prior to the offering of PCS.

This further correspondence is a plan for the Commission to act. The continued failure to act in this matter is jeopardizing the fulfillment of the Commission's PCS vision.

As we have also noted, except in the most egregious circumstances, PCS licensees are reluctant to go public with their frustrations over the recalcitrant behavior of microwave incumbents. This reticence is due to their fear of even greater delay in bringing incumbents to the bargaining table or the risk of future retribution in cases where the incumbent is also a governmental body.

Today, it is my unfortunate duty to further report several representative cases in which the microwave incumbents' behavior is so outlandish and irresponsible as to threaten the ability of PCS licensees to begin offering service this year. The **severity of the impact of this situation has compelled** one PCS company, a member of CTIA, to risk the potential retribution resulting from public disclosure.

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Building The  
Wireless Future.

CTIA

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Thomas E. Wheeler  
President / CEO

Chairman Hundt  
 March 1, 1996  
 Page Two'

Sprint Spectrum (formerly Sprint Telecommunications Venture or STV) is currently licensed to provide service in twenty-nine MTA markets.<sup>1</sup> Approximately 1,400 microwave links are located within Sprint Spectrum's licensed spectrum bands, making it the MTA licensee with the greatest number of links that may require relocation. By its own estimate, 71 of those links must be relocated to initiate service throughout its markets. Of course, as capacity requirements expand with subscriber growth, additional links will have to be moved, as well.

The attached materials detail the outrageous financial demands of certain microwave incumbents having links in Sprint Spectrum's PCS bands. You will note that the demands of the Union Pacific Railroad exceed even that of the Suffolk County (Long Island) Police Department, the incumbent that Sprint Spectrum was previously willing to identify.<sup>2</sup> For your convenience the attached information is summarized below.<sup>3</sup>

<u>Microwave Incumbent</u>	<u># of Links</u>	<u>Est. Fair Cost</u>	<u>Requested Cost</u>	<u>Excession Delta</u>
Union Oil of California	5	\$1,280,000	\$18,380,982	\$ 17,100,982
Union Pacific Railroad	24	6,666,000	46,280,000	40,280,000
Puget Power	12	3,666,000	7,666,000	4,000,000
Williams Wireless	7	1,750,000	21,360,000	19,610,000
Washington State Patrol	10	2,800,000	2,888,617	388,617
Western Resources	2	500,000	820,136	320,136
BNSF	1	250,000	2,080,000	1,780,000
Gustadloupe Valley Elect. Co-op	2	500,000	1,304,416	804,416
New Jersey Turnpike Authority	4	1,000,000	2,500,000	1,500,000
Detroit Edison	2	500,000	980,400	480,400
Suffolk County Police	2	500,000	22,500,000	21,500,000
<b>Total</b>	<b>71</b>	<b>\$17,760,000</b>	<b>\$126,022,551</b>	<b>\$108,272,551</b>

Per link excess charge:.....\$1,524,965

<sup>1</sup> Sprint Spectrum is licensed to serve the following MTA markets: New York, NY; San Francisco-Oakland-San Jose, CA; Detroit, MI; Dallas-Fort Worth, TX; Boston, MA-Providence, RI; Minneapolis-St. Paul, MN; Miami-Fort Lauderdale, FL; New Orleans-Baton Rouge, LA; St. Louis, MO; Milwaukee, WI; Pittsburgh, PA; Denver, CO; Seattle, WA (excluding Alaska); Louisville-Lexington-Evansville, KY; Phoenix, AZ; Birmingham, AL; Portland, OR; Indianapolis, IN; Des Moines-Quad Cities, IA; San Antonio, TX; Kansas City, KS; Buffalo-Rochester, NY; Salt Lake City, UT; Oklahoma City, OK; Spokane, WA-Billings, MT; Nashville, TN; Wichita, KS; and Tulsa, OK. Its affiliate, American Personal Communications, trading under the Sprint Spectrum brand, serves the Washington, DC-Baltimore, MD MTA.

<sup>2</sup> See Comments of CTIA in this proceeding, filed December 1, 1995, Exhibit I, at 1.

<sup>3</sup> Unlike the attached detailed information from Sprint Spectrum, CTIA has assumed an "estimated fair cost" of \$250,000 per microwave link, the maximum per link amount contained in the Commission's proposed cost sharing plan. As such, in several instances, the summary information underestimates the per link excess charge demanded by the incumbents.

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OFFICE OF SECRETARY

Chairman Hundt  
March 1, 1996  
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The \$108 million difference between the estimated fair relocation cost and the sums demanded by the incumbents for these 71 links is clearly unreasonable and, CTIA believes, clear evidence of bad faith on the part of the incumbents. Of course these numbers provide only a partial picture of the kind of abuse PCS providers must confront.

The magnitude of this problem can be illustrated another way. If the average per link excess charge (\$1,524,986) is extrapolated to the C block PCS band, where approximately 1,874 microwave links are found, the amount demanded above the fair estimated relocation cost would come to more than \$2.8 billion.<sup>4</sup> Extrapolating the overage (\$1,524,986) to the D, E, and F PCS bands, where as many as 2,951 microwave links may require relocation, the amount demanded above the fair estimated relocation cost would come to more than \$4.6 billion.<sup>5</sup>

These incumbents know that they can take advantage of the Commission's current voluntary negotiation rules by refusing to bargain in earnest or by making financial demands having no relation to the actual costs of relocation. Mr. Chairman, enough is enough! We have previously submitted information which has been "sanitized" to prevent retribution. This instance is merely illustrative and, fortunately, Sprint Spectrum has been willing to "go public."

This behavior is not what the Commission envisioned when it adopted the current rules. Sprint Spectrum has invested more than \$2 billion in the auction alone and will spend untold millions more to build out its markets. How much more will be added to the price tag by the incumbents? How much more must PCS providers "invest" to meet the greedy demands of microwave incumbents when these funds might be used to innovative services to the public?

The Commission must act with dispatch to change the microwave relocation rules to eliminate this kind of irresponsible behavior by parties holding a public trust, i.e., their FCC licenses. The rules must be changed if the American public is to enjoy the benefits of new wireless competition. CTIA urges the Commission to, post-haste, make the following changes in the microwave relocation rules:

1. Shorten the voluntary negotiation period to one year.

<sup>4</sup>  $\$1,524,986 \times 1,874 = \$2,857,786,000$ .

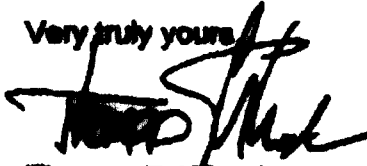
<sup>5</sup>  $\$1,524,986 \times 2,951 = \$4,500,173,211$ . Because the D,E and F licenses will have only ten megahertz to work with, a higher percentage of the resident microwave links may have to be relocated to initiate service.

Chairman Hundt  
March 1, 1998  
Page Four

2. Require "good faith" negotiation during the voluntary period. As an element in the determination of an incumbent's good faith, the incumbent should be required to provide a reasonable justification of its financial and technical demands.
3. To encourage incumbents to negotiate during the voluntary period, recoverable costs during the mandatory negotiation period should be limited to the undepreciated cost of the incumbent licensee's existing system.
4. A determination of an incumbent's failure to negotiate in good faith during the voluntary period should immediately invoke the commencement of the mandatory negotiation period and the incumbent's license should be immediately downgraded to secondary status.

While most microwave incumbents are behaving responsibly, the Commission must eliminate the ability of a few mercenary incumbents to thwart nationwide PCS in its infancy.

Very truly yours,



Thomas E. Wheeler

cc: Commissioner James H. Quello  
Commissioner Andrew C. Barrett  
Commissioner Rachelle B. Chong  
Commissioner Susan Ness  
Michelle Farquhar  
Roselind Allen